

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|-----------------------|---|---------------------------|
| JOHN B. STEVENS, |) | CASE NO. 1:06CV2593 |
| |) | |
| |) | JUDGE GWIN |
| Petitioner, |) | |
| |) | MAGISTRATE JUDGE HEMANN |
| v. |) | |
| |) | |
| ROB JEFFRIES, WARDEN, |) | REPORT AND RECOMMENDATION |
| |) | |
| Respondent. |) | |

Pending before the court on referral is petitioner's "Motion to Consolidate Cases Purs. To RFCVP R. 42(a)." Petitioner asks that this action, filed pursuant to 28 U.S.C. § 2254, be consolidated with Case No. 3:05CV7264, an action pending before Judge James Carr in the Northern District of Ohio, Western Division, alleging violations of 42 U.S.C. § 1983. The latter action was filed on June 22, 2005.

Petitioner seeks consolidation pursuant to Fed. R. Civ. Pro. 42(a):

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

He argues that the issue of probable cause is common to both the habeas and § 1983 actions. The

court disagrees. Petitioner's habeas action necessarily raises the issue of the constitutionality of his conviction. His § 1983 complaint appears to raise issues of excessive force. Even if the issue were probable cause, that claim is not cognizable in habeas review.

Moreover petitioner's § 1983 complaint has been pending for over a year and has resulted in a number of judicial actions, none of which are relevant to the habeas claim. The habeas claim is likely to be resolved more quickly than the § 1983 claim because of the standard of review and narrow issues raised. Consolidation would yield no judicial economy.

For the above stated reasons, the magistrate judge recommends that petitioner's motion to consolidate be overruled.

Dated: February 21, 2007

s:\Patricia A. Hemann

Patricia A. Hemann
United States Magistrate Judge

OBJECTIONS

Any objections to this Report and Recommendation must be filed with the Clerk of Courts within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986).